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### BILL TEXT AND BACKGROUND FOR THE WEEK OF SEPTEMBER 20, 2010

- [Senate Amendment to H.R. 5297 – Small Business Lending Fund Act of 2010](#)

[SENATE AMENDMENT TO H.R. 5297 – SMALL BUSINESS LENDING FUND ACT OF 2010](#) (Rep. Frank – Financial Services) (Subject to a Rule)

Bill Text: [HTML](#), [PDF](#)

[Bill Summary and Status](#)

Rules Committee Meeting: Meeting Time: Wednesday 9/22 at 5:00 pm, [Text of the Amendment](#)

Committees: [House Committee on Financial Services](#)

Committee Staff Contacts: Financial Services: 5-4247

#### **BILL SUMMARY & KEY ISSUES:**

##### **SUMMARY OF SENATE AMENDMENT TO H.R. 5297 – SMALL BUSINESS LENDING FUND ACT OF 2010**

#### **Provisions to Provide Access to Capital**

**100% Exclusion of Small Business Capital Gains.** Generally, non-corporate taxpayers may exclude 50 percent of the gain from the sale of certain small business stock acquired at original issue and held for more than five years. For stock acquired after February 17, 2009 and before January 1, 2011, the exclusion is increased to 75 percent. At the time of sale, however, 28% of the excluded gain will be treated as a tax preference item subject to the alternative minimum tax (AMT). Qualifying small business stock is from a C corporation whose gross assets do not exceed \$50 million (including the proceeds received from the issuance of the stock) and who meets a specific active business requirement. The amount of gain eligible for the exclusion is limited to the greater of ten times the taxpayer's basis in the stock or \$10 million of gain from stock in that corporation. This bill would temporarily increase further the amount of the exclusion to 100 percent of the gain from the sale of qualifying small business stock that is acquired after the date of enactment in 2010 and held for more than five years. Additionally, the bill eliminates the AMT preference item attributable for that sale. *This provision is estimated to cost \$518 million over ten years.*

**General Business Credit Carried Back Five Years.** Under current law, a business' unused general business credit may generally be carried back to offset taxes paid in the previous year, and the remaining amount may be carried forward for 20 years to offset future tax liabilities. This bill extends the one year carryback for general business credits to five years for certain small businesses. This applies to general business credits for those sole proprietorships, partnerships and non-publicly traded corporations with \$50 million or less in average annual gross receipts for the prior three years. *This provision is estimated to cost \$107 million over ten years.*

**General Business Credit Not Subject to AMT.** Under the Alternative Minimum Tax (AMT), taxpayers may generally only claim allowable general business credits against their regular tax liability, and only to the extent that their regular tax liability exceeds their AMT liability. A few credits may be used to offset AMT liability, such as the credit for small business employee health insurance expense. This bill allows certain small businesses to use all types of general business credits against their AMT. This applies to general business credits for those sole proprietorships, partnerships and non-publicly traded corporations with \$50 million or less in average annual gross receipts for the prior three years. *This provision is estimated to cost \$977 million over ten years.*

**S Corp Holding Period.** Generally, a C corporation converting to an S corporation must hold onto any appreciated assets for 10 years following its conversion or face a business-level tax imposed on the built-in gain at the highest corporate rate of 35 percent. This holding period is reduced where the 7th taxable year in the holding period preceded the taxable year beginning in 2009 or 2010. This bill temporarily shortens the holding period of assets subject to the built-in gains tax to 5 years if the 5th taxable year in the holding period precedes the taxable year beginning in 2011. *This provision is estimated to cost \$70 million over ten years.*

**Increase Small Business Administration (SBA) Loan Limits.** This provision increases 7(a) loan limits from \$2 million to \$5 million, 504 loans from \$1.5 million to \$5.5 million, and microloans from \$35,000 to \$50,000. It also increases the government guarantee on 7(a) loan limits, while providing the elimination of borrower fees on 7(a) and 504 loans through December 31, 2010. It increases the 7(a) Express Loans from \$300,000 to \$1 million to increase working capital to small businesses. The package also includes Intermediary Lending Pilot program, which allows the SBA to make direct loans to eligible nonprofit lending intermediaries, in turn allowing them to make loans to new or growing small businesses. SBA has estimated that the loan increase would increase lending to small businesses by \$5 billion in the first year. *This provision is estimated to cost \$26 million over two years.*

**Extend Elimination of Small Business Administration (SBA) Loan Fees.** This provision extends the American Recovery and Reinvestment Act small business lending program that eliminates the fees normally charged for loans through the SBA 7(a) and 504 loan programs and increases the government guarantees on 7(a) loans from 75% to 90%. Since its creation, the program has supported over \$26 billion in small business lending, which has helped to create or retain over 650,000 jobs. This provision was added in the substitute amendment introduced on July 21, 2010. *This provision is estimated to cost \$505 million over ten years.*

**State Small Business Credit Initiative (SSBCI).** The bill provides \$1.5 billion in grants to States to support small business lending programs. States will apply for the funds to be used for approved programs that leverage private lenders to extend greater credit to small businesses and manufacturers. The program allows States to build upon successful models for state small business programs, including capital access, loan participation, collateral support, State-run venture capital, and credit guarantee programs. Funds are allocated to the States using formulas based on certain State employment and unemployment rate data. States have nine months to apply for the program. If the state does not apply, the largest municipalities of the states can apply. This provision was increased by \$600 million in the substitute amendment introduced on July 21, 2010. *This provision is estimated to cost \$1.5 billion over ten years.*

**Small Business Lending Fund.** The bill authorizes the creation of the Small Business Lending Fund to provide Treasury with the ability to purchase preferred stock and other debt instruments from eligible financial institutions with less than \$10 billion in total assets. Eligible institutions include insured depositories, bank and savings and loan holding companies, and certain community development loan funds. Eligible institutions with less than \$1 billion in total assets can apply to receive investments of up to five percent of their risk-weighted assets. Eligible institutions between \$1 billion and \$10 billion in total assets can receive investments of up to three percent of risk-weighted assets. Participating institutions will pay a five percent dividend rate on the preferred stock, but this rate can be reduced to as low as one percent if a bank demonstrates a 10 percent increase in small business lending relative to a baseline set using the four quarters prior to enactment. The dividend rate is increased to seven percent after two years, if the bank does not increase its small business lending. To encourage timely repayment, the rate increases to nine percent after four and a half years. Treasury's authority to make capital investments under the program is terminated one year after the date of enactment. This provision was added in the substitute amendment introduced on July 27, 2010. *This provision is estimated to raise \$1.1 billion over ten years.*

## **Provisions to Encourage Investment**

**Increase of Section 179 Expensing and Expansion to Certain Real Property.** Under current law, taxpayers may elect to write-off the costs of certain tangible personal property that is purchased for use in the active conduct of a trade or business in the year of acquisition in lieu of recovering these costs over time through depreciation. For the taxable year beginning in 2010, taxpayers may write-off up to \$250,000 of these capital expenditures subject to a phase-out once these capital expenditures exceed \$800,000. After 2010, the thresholds revert to \$25,000 and \$200,000, respectively. This bill would increase the thresholds to \$500,000 and \$2,000,000 for the taxable years beginning in 2010 and 2011. Within those thresholds, this bill would allow taxpayers to expense up to \$250,000 of the cost of qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property. *This provision is estimated to cost \$2.2 billion over ten years.*

**Extension of Bonus Depreciation.** Businesses are allowed to recover the cost of capital expenditures over time according to a depreciation schedule. Congress temporarily allowed businesses to recover the costs of certain capital expenditures made in 2008 and 2009 more quickly than under ordinary depreciation schedules by permitting those businesses to immediately write-off 50 percent of the cost of depreciable property placed in service in those years. This bill extends the additional, first-year 50 percent depreciation for qualifying property purchased and placed in service in 2010. *This provision is estimated*

to cost \$5.5 billion over ten years.

***Special Rule for Long-Term Contract Accounting.*** This provision decouples bonus depreciation from allocation of contract costs under the percentage of completion accounting method rules for assets with a depreciable life of seven years or less in order to allow contractors that do not complete contracts within the same year in which they are entered into to benefit from bonus depreciation. This provision was added in the substitute amendment introduced on July 21, 2010. *This provision is estimated to have no cost over ten years.*

### **Provisions to Promote Entrepreneurship**

***Increased Deduction for Start-up Expenditures.*** Under current law, taxpayers may deduct up to \$5,000 in trade or business start-up expenditures. The amount that a business may deduct is reduced by the amount by which start-up expenditures exceed \$50,000. Start-up expenditures are defined as expenses paid or incurred in connection with investigating or creating an active trade or business, which would be deductible if paid or incurred in connection with the operation of an existing trade or business. For the taxable year beginning in 2010, this bill would temporarily increase the amount of start-up expenditures that may be deducted to \$10,000 subject to a \$60,000 phase-out threshold. *This provision is estimated to cost \$230 million over ten years.*

***Small Business Export Promotion.*** The Office of the United States Trade Representative (USTR) plays an important role in promoting U.S. exports, and recently increased its focus on small business export promotion in particular. USTR has done so in several respects, including the creation of the position of Assistant USTR for Small Business, Market Access, and Industrial Competitiveness within USTR. This official will help ensure that USTR's trade policy addresses the challenges facing smaller U.S. exporters and promotes global export opportunities for them. The bill authorizes funds for USTR's market access and trade enforcement activities targeted at helping small business increase market access and ensure a level playing field on which to sell their U.S. made goods. *This provision has no cost associated with it.*

***Export Promotion Act.*** The substitute would assist U.S. small and mid-sized businesses that are looking to export their products but do not have the resources or know-how to find new international customers. First, it increases the activities and staffing of the Department of Commerce in carrying out its mission to promote U.S. exports. Second, it authorizes increased funding for export grants available to industry associations and non-profit institutions. Finally, the amendment requires that decisions to fund manufacturing and innovation grants include exporting potential as one of the application considerations. The Department of Commerce's International Trade Administration historically has shown that for every \$1 million dollars in appropriated funds, \$56.6 million in exports are seen in return. This legislation is projected to support over 40,000 jobs once the funds are appropriated. This provision was added in the substitute amendment introduced on July 27, 2010. *This change has no cost associated with it.*

***Enhanced Small Business Trade Opportunities.*** This provision improves the SBA's trade and export finance programs and elevates the Office of International Trade within the SBA. It adds Export Finance Specialists to the SBA's trade counseling programs. It also establishes the State Export Promotion Grant Program (STEP), which would increase the number of small businesses that export. In addition, it improves coordination between federal and state agencies and SBA resource partners. This leverages more than \$1 billion in export capitol for small businesses, which will create or save as many as 40,000 – 50,000 jobs in 2010. *This provision is estimated to cost \$58 million over two years.*

***Improved Small Business Contracting.*** Removes the red tape and closes loopholes that too often put government work into the hands of multinational corporations instead of Main Street businesses. Increasing contracts to small businesses by just 2 percent can create more than 60,000 jobs. This legislation also provides for a periodic review of small business size standards to ensure that size indicators are consistent with inflation and industry growth of small businesses. It establishes accountability of large business prime contractors for prompt payment to small business subcontractors. *This provision is estimated to cost \$142 million over two years.*

***Relief for Community Partners.*** This provision allows SBA to waive or reduce the non-federal share of its funding requirements for up to one year, through fiscal year 2012. It also gives relief to Women's Business Centers (WBCs) and microloan intermediaries, which provide assistance to underserved communities to start and grow small businesses. The SBA estimates that the microloan program will create or save more than 10,000 jobs in Fiscal Year 2011. This legislation also provides an additional \$50 million for the Small Business Development Centers to provide technical assistance to small business owners and entrepreneurs. *This provision is estimated to cost \$50 million for one year.*

### **Provisions to Promote Small Business Fairness**

***Modify Section 6707A Penalty.*** The bill revises section 6707A of the Internal Revenue Code to make the penalty for failing to disclose a reportable transaction proportionate to the underlying tax savings. The penalty for failure to disclose reportable transactions to the IRS would be set at 75 percent of the tax benefit received. Reportable transactions are defined as investments in transactions that the IRS has identified as listed tax shelters or that have characteristics of tax shelters, including large losses or confidentiality agreements. The minimum penalty under this bill is \$10,000 for corporations and \$5,000



for individuals, and the maximum penalty is \$200,000 for corporations and \$100,000 for individuals. The bill also requires the IRS to provide an annual report to the Senate Finance Committee and to the House Ways and Means Committee giving an account of certain tax-shelter related penalties asserted during the year. *This provision is estimated to cost \$176 million over ten years.*

***Deductibility of Health Insurance for the Purposes of Calculating Self-Employment Tax.*** Under current law, business owners are not permitted to deduct the cost of health insurance for themselves and their family members for purposes of calculating self-employment tax. This provision would allow business owners to deduct the cost of health insurance incurred in 2010 for themselves and their family members in the calculation of their 2010 self-employment tax. *This provision is estimated to cost \$1.9 billion over ten years.*

***Enhancements to Small Business Contracting Parity Programs.*** This provision removes the priority one contracting program has over another, making clear that no single restricted competition program has priority over another. It places the small business contracting programs, HUBZone, 8(a), Service-Disabled Veterans and Women-Owned Businesses on a level playing field when competing for Federal contracts. *This provision has no cost associated with it.*

***Improvements to Disaster Recovery to Include Aquaculture.*** Currently, the SBA excludes aquaculture businesses from receiving SBA Economic Injury Disaster Loans (EIDL). This section would allow SBA, provided it does not duplicate other Federal disaster programs for that disaster, to make economic injury disaster loans to these businesses. *This provision has no cost associated with it.*

***Require Federal Agencies to Expand Their Assessments of Economic Effects on Small Businesses.*** This provision strengthens the Regulatory Flexibility Act by requiring agencies to respond to the SBA Chief Counsel of Advocacy's comments in the final rule. It also seeks more independence for the Office of Advocacy by mandating a separate line item in the SBA's annual budget. *This provision has no cost associated with it.*

***Remove Cellular Phones from "Listed Property."*** This provision would "delist" cell phones so their cost can be deducted or depreciated like other business property, without onerous recordkeeping requirements. This provision was added in the substitute amendment introduced on July 21, 2010. *This provision is estimated to cost \$410 million over ten years.*

#### **Offsets – Reducing the Tax Gap**

***Require Information Reporting for Rental Property Expense Payments.*** The bill requires persons receiving rental income from real property to file information returns to the IRS and to service providers reporting payments of \$600 or more during the year for rental property expenses. In general, there is an exception for individuals renting their principal residences, including active members of the military, from the reporting requirements. *This provision is estimated to raise \$2.5 billion over ten years.*

***Increase Penalties for Failure to File Information Returns.*** The bill increases penalties for failure to timely file information returns to the IRS. The first-tier penalty is increased from \$15 to \$30, and the calendar year maximum is increased from \$75,000 to \$250,000. The second-tier penalty is increased from \$30 to \$60, and the calendar year maximum is increased from \$150,000 to \$500,000. The third-tier penalty is increased from \$50 to \$100, and the calendar year maximum is increased from \$250,000 to \$1.5 million. For small filers, the calendar year maximum is increased from \$25,000 to \$75,000 for the first-tier penalty, from \$50,000 to \$200,000 for the second-tier penalty, and from \$100,000 to \$500,000 for the third-tier penalty. The minimum penalty for each failure due to intentional disregard is increased from \$100 to \$250. The penalty amounts are adjusted every five years for inflation. Penalties for failure to file information returns to payees are similarly increased. *This provision is estimated to raise \$421 million over ten years.*

***Application of Continuous Levy to Tax Liabilities of Certain Federal Contractors.*** Generally, before the IRS can issue a levy for an unpaid Federal tax liability, it must give the taxpayer an opportunity for a collection due process (CDP) hearing. Prior to the Federal government disbursements to Federal contractors, an automated check for a Federal tax liability occurs. When such a liability is identified, the IRS issues a CDP notice to the contractor but cannot levy on payments to the contractor until the CDP requirements are complete. The bill allows IRS to issue levies prior to a CDP hearing on Federal tax liabilities of Federal contractors. It also provides the taxpayer with an opportunity for a CDP hearing within a reasonable time after a levy is issued. *This provision is estimated to raise \$1.1 billion over ten years.*

#### **Offsets – Promoting Retirement Preparation**

***Allow Participants in Governmental 457 Plans to Treat Elective Deferrals as Roth Contributions.*** Beginning in 2011, the bill would allow retirement savings plans sponsored by state and local governments (governmental 457(b) plans) to include Roth accounts, which are currently available only in 401(k) and 403(b) plans and will be available in the federal Thrift Savings Plan in 2011. Contributions to Roth accounts are made on an after-tax basis, but distributions of both principal and earnings are generally tax-free. *This provision is estimated to raise \$506 million over ten years.*

**Allow Rollovers from Elective Deferral Plans to Roth Designated Accounts.** The bill would allow 401(k), 403(b), and governmental 457(b) plans to permit participants to roll their pre-tax account balances into a Roth account. The amount of the rollover would be includible in taxable income except to the extent it is the return of after-tax contributions. If the rollover is made in 2010, the participant can elect to pay the tax in 2011 and 2012. Plans would be able to allow these rollovers immediately upon enactment. *This provision is estimated to raise \$5.1 billion over ten years.*

**Permit Partial Annuitization of a Nonqualified Annuity Contract.** The substitute would allow holders of nonqualified annuities (that is, annuity contracts held outside of a tax-qualified retirement plan or IRA) to elect to receive a portion of the contract in the form of a stream of annuity contracts, leaving the remainder of the contract to accumulate income on a tax-deferred basis. This provision was added in the substitute amendment introduced on July 21, 2010. *This provision is estimated to raise \$956 million over ten years.*

### **Offsets – Closing Unintended Loopholes**

**Crude Tall Oil Ineligible for Cellulosic Biofuel Producer Credit.** In 2008, Congress enacted a \$1.01 per gallon tax credit for the production of biofuel from cellulosic feedstocks in order to encourage the development of new production capacity for biofuels that are not derived from food source materials. Some taxpayers are seeking to claim the cellulosic biofuel tax credit for processed fuels that are highly corrosive, such as crude tall oil (another waste by-product of the paper manufacturing process). The bill limits eligibility for the tax credit to fuels that are not highly corrosive (i.e., fuels that could be used in a car engine or in a home heating application). *This provision is estimated to raise \$1.8 billion over ten years.*

**Source Rules on Guarantees.** Under current law, the treatment of guarantee fees under the source rules is unclear. If guarantee fees are sourced like services, they are sourced according to the location in which the services were performed. If the guarantee fees are sourced like interest, they are sourced by reference to the country of residence of the payor. A recent court case determined that guarantee fees should be sourced like services. Sourcing guarantee fees in a manner similar to services would permit U.S. subsidiaries of foreign corporations to engage in earning stripping transactions by making deductible payments to foreign affiliates (thereby reducing their U.S. income tax liability) without the imposition of U.S. withholding tax on the payment. The substitute would provide that amounts received directly or indirectly for guarantees of indebtedness of the payor issued after the date of enactment will be sourced like interest and, as a result, if paid by U.S. taxpayers to foreign persons will generally be subject to withholding tax. No inference is intended with respect to the treatment of guarantees issued before the date of enactment. This provision was added in the substitute amendment introduced on July 21, 2010. *This provision is estimated to raise \$2 billion over ten years.*

### **Other Provisions**

**Use of Predictive Modeling and Other Analytics Technologies to Identify and Prevent Waste, Fraud and Abuse in the Medicare Fee-for Service Program.** The bill would require the Secretary to contract with private companies to conduct predictive modeling and other analytics technologies to identify and prevent payment of improper claims submitted under Parts A and B of Medicare. The Secretary would be required to identify the ten states that have the highest risk of waste, fraud and abuse in the Medicare program, and for one year, predictive modeling and other analytics technologies would be used to identify and stop fraudulent claims in these states. After this initial year, the Inspector General of the Department of HHS (HHS OIG) would report to Congress on the actual savings to the Medicare fee-for-service during the preceding year, projected future savings to the program as a result of the use of these technologies, and the return on investments as a result of the predictive analytics technologies. The Secretary would be required to report to Congress on the effect, if any, the technologies have on Medicare beneficiaries and providers. If the HHS OIG certifies more than nominal savings from the use of the technology, its use would be expanded to ten additional states for another year. After the second year of use, the Secretary and the HHS OIG, would conduct a second analysis and certification. If this analysis and certification are positive, the technologies would be expanded to the Medicare fee-for-service program in every state for an additional year. Finally, after that additional year, a third analysis would be conducted, and if positive, the Secretary would expand the use of the technologies to Medicaid and the Children's Health Insurance Program (CHIP). If during any evaluation and certification, the HHS OIG does not certify savings, a moratorium would be imposed on the expansion of the technologies for one year. This provision was added in the substitute amendment introduced on July 27, 2010. *This change increases the cost of the bill by \$930 million over ten years.*

### **House Report 111-499:**

[HTML Version](#); [PDF Version](#)

### **Full Committee on Financial Services Mark-up:**

[Markup of H.R. 5297](#): "Small Business Lending Fund Act of 2010," May 19, 2010

- Video: [Watch](#)
- [Summary of Committee Votes](#)

**CBO Report:**

[Pay-as-you-go estimate](#) for Senate Amendment 4594 in the nature of a substitute to H.R. 5297, August 9, 2010.

[Cost Estimate](#): As ordered reported by the House Committee on Financial Services on May 19, 2010.

**CRS Reports:**

[R41385](#): Small Business Legislation: H.R. 3854 and H.R. 5297 – 9/17/10

[R41057](#): Small Business Administration Microloan Program – 9/17/10

[R40985](#): Small Business: Access to Capital and Job Creation – 9/17/10

[R41268](#): Small Business Administration HUBZone Program – 9/17/10

[R41146](#): Small Business Administration 7(a) Loan Guaranty Program – 9/17/10

[R40860](#): Defining Small Business: An Historical Analysis of Contemporary Issues – 9/17/10

[R41352](#): Small Business Management and Technical Assistance Training Programs – 9/17/10

[RL31852](#): Small Business Expensing Allowance: Current Status, Legislative Proposals, and Economic Effects – 9/15/10

[R41400](#): Economic Analysis of the Enhanced Form 1099 Information Reporting Requirements – 9/15/10

[R41359](#): Form 1099 Information Reporting Requirements as Modified by the Patient Protection and Affordable Care Act

**Administration Position:**

[Statement by President Obama on the Small Business Jobs Bill](#), The White House

[Remarks by the President on Small Business Jobs Bill](#), The White House

[Statement by the President on House Passage of the Small Business Lending Fund and Small Business Credit Initiative](#), The White House

**Organization Statements:**

[Congress should replenish loan fund for small business](#), Anthony R. Wilkinson, National Association of Government Guaranteed Lenders Inc.

[ICBA Lauds Senate Passage of Small Business Jobs Act](#), Independent Community Bankers of America

**Fact Sheets & Talking Points**

[Small Business Jobs and Credit & Tax Relief Acts](#), Speaker Pelosi

[Small Business Jobs and Credit & Tax Relief Acts Web Page](#), Speaker Pelosi

Senate Democrats Fighting for Small Business Tax Relief

**Press Releases, News Articles & Related Information:**

[Senate Passes Small-Business Package; House Expected to Clear Measure](#), CQ Today

[Senate Passes Bill to Aid Small Business](#), Roll Call

[Pelosi Statement Following Senate Passage of the Small Business Jobs and Credit Act](#), Office of the Speaker

[Hoyer Statement on Senate Passage of the Small Business Lending Act](#), Office of the Majority Leader

[Senate Passes Landmark Small Business Jobs Creation Bill](#), Senate Committee on Small Business and Entrepreneurship

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